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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-190645

DATE: November 30, 1977

MATTER OF: International Trade Operations

DIGEST:

1. Question of whether a bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor, and will not be reviewed by GAO.
2. Small business protest of proposed agency finding that it is not a manufacturer or regular dealer under Walsh-Healey Act is dismissed where matter has been referred to Small Business Administration for resolution pursuant to section 501 of P.L. 95-89.

By letter dated November 8, 1977, International Trade Operations (ITO) has protested the proposed award of contracts to any other bidders pursuant to solicitation Nos. DACAB7-77-B-0120, DACAB7-77-3-0133, and DACAB7-77-B-0136, issued by the United States Army Corps of Engineers, Huntsville, Alabama. The protester alleges that the Defense Contract Administration Services Region (DCASR), Philadelphia, is about to report its finding that ITC's bids are ineligible for award because ITO is not a regular dealer under the Walsh-Healey Act. The protester contends that because it is a small business concern it may not be rejected from award consideration under the Walsh-Healey Act without referral of the matter of its ineligibility for award to the Small Business Administration for consideration.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. Acme Plastics, Inc., B-189018, June 8, 1977, 77-1 CPD 415; CNC Company, B-188176, B-188441, March 29, 1977, 77-1 CPD 221.

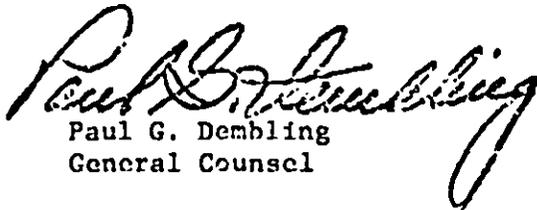
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Since the protester is a small business concern, section 501 of P.L. 95-89, 91 Stat. 561, amending section 8(b) of the Small Business Act of 1958, is also for application. Section 501 states in pertinent part:

"(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a) of title 41, United States Code (the Walsh-Healey Public Contracts Act), he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation."

The Corps of Engineers has advised us that the matter of ITO's eligibility has been referred to the Small Business Administration for resolution pursuant to section 501 of P.L. 95-89.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel